IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 9542 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DHANSUKHBHAI BALWANTRAI MODI

Versus

THE STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 9542 of 2004

MR AD SHAH for Petitioner No. 1

MR AY KOGJE, APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 21/10/2004

ORAL JUDGEMENT

Heard ld. counsel Mr. AD Shah for the petitioner. In compliance with the order passed by the

Court, the papers of investigation have been brought before the Court today. On perusal, it appears that the present petitioner is shown absconding in the chargesheet prepared on 20.03.2004 and submitted to the Court on 28.04.2004. From the document annexed to the petition at page-9 and the decision dated 29.07.2004, Annex.B at page-10 of this Court in Spl.Cri. Application No.94/2004, it is clear that the petitioner was protected from formal arrest by the orders passed by the Court. So, it, prima facie, emerges from the record that except the statement of main accused who has been chargesheeted, no independent evidence is available. On careful consideration of the papers of investigation tendered before the Court today and ratio of the decision of this Court in the case of Ranjitsinh Dolatsinh Waghela v/s State of Gujarat (Cri.Misc. Application No.7323/2001) decided on 18.01.2002, there is ample force in the say of ld. counsel Mr. Shah that the prosecution instituted against the petitioner can not sustain.

This Court while dealing with the above-cited case, a matter concerning the offence punishable under the NDPS Act, has rightly held that the name of the present petitioner ought not to have been shown as a person absconding because the day on which the chargesheet was prepared and filed, the investigating agency had no legal evidence involving the present petitioner into the offence. I have considered the ratio of the decision of the Apex Court in the case of Roy V.D. v/s State of Kerala, (2000) 8SCC 590, and Gomaram Somaram Jat v/s U.H.Patel & Anr., 2000(1) GLR 99. Both these decisions were considered by this Court in dealing with the case in the above-cited decisions. So, adopting the reasons assigned by the Court while considering the aforesaid decisions, this petition can also be allowed.

Hence, Rule. Service of Rule is waived by ld. APP Mr. AY Kogje for the respondent State. Rule is fixed forthwith.

In view of facts and circumstances and reasons assigned by this Court as well as adopting the reasons assigned by the Apex Court in the above-cited decisions, this Cri. Misc. Application is allowed. It is hereby ordered to delete the name of the petitioner caused in column No.2 "Not sent for trial" as "absconding accused" in Criminal Case No.393/2004 pending in the Court of Ld. Judicial Magistrate (F.C.), 3rd Court, Surat. Rule is made absolute. It is clarified that the present order is passed in the facts and circumstances of the case which are brought to the notice of the Court qua the present crime only.

D.S. Permitted.

[C.K. BUCH, J]

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